



July 31, 2026

Andrew Ferguson, Chairman
Federal Trade Commission
600 Pennsylvania Ave, NW
Washington, DC 20580

Submitted via regulations.gov

Re: Comment on the Federal Trade Commission’s Proposed AI Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems, Matter No. P264200

Dear Chairman Ferguson:

The National Center for Youth Law (“NCYL”) submits this comment opposing the Federal Trade Commission’s (“FTC”) Policy Statement Concerning the Suppression of Accuracy in Artificial Intelligence Systems (“Proposed AI Policy”). As discussed further below, the Proposed AI Policy misrepresents state efforts to regulate potentially discriminatory AI systems, placing historically marginalized children and families at risk of being unlawfully denied a range of services and benefits administered, at least in part, by AI systems. Additionally, the FTC’s proffer that state regulatory efforts to ensure AI systems do not discriminate against children and families are preempted by the FTC Act is an inaccurate interpretation of that law and amounts to improper overreach of executive power. With the increasing expansion of AI, states must retain the authority to regulate unlawful AI systems and nothing in the FTC Act suggests otherwise.

NCYL is a national advocacy organization that is building a future where every child thrives and is supported by families and communities. The use of AI is now impacting the lives of children and youth in virtually every area of our work, including education, immigration, healthcare, child welfare, economic justice, and youth justice.¹ As the Proposed AI Policy notes, AI is “now used across nearly every sector of the economy and in most people’s daily lives.” While the promise of AI includes the opportunity to provide faster, more efficient access to vital services for families like housing and public benefits, the risks to those same families must be properly understood and addressed. State efforts seeking to address those barriers and harms must be encouraged, not threatened.

¹ Shakti Belway, Dafna Gozani, Georgia Logothetis, & Samone Nigam, *The Urgent Need for Child-Centered Artificial Intelligence Policies: Protecting & Respecting the Rights and Well-Being of America’s Youngest Generation* 10-12, NATIONAL CENTER FOR YOUTH LAW (Apr. 24, 2024), <https://youthlaw.org/wp-content/uploads/ncyl-ai-brief-april-2024.pdf>.

Unleashing AI in the manner directed by the Proposed AI Policy Statement and restricting proper state governance of this technology will likely undermine privacy, consent, bias mitigation, and human accountability—each non-negotiable pillars for AI governance. NCYL respectfully urges the FTC to rescind the statement.

I. States should be able to properly regulate AI systems that discriminate against children and families.

Children, like people all across our country, have inherent rights, autonomy, and agency. While AI can help meet the needs of diverse children and open up opportunities, AI also presents tremendous risks to those rights, autonomy, and agency, particularly in education, healthcare, immigration, youth justice, economic justice, and child welfare systems where significant harm may occur, impacting human and civil rights.² Children from underserved communities face an even greater likelihood of being negatively affected by these systems due to legacies of racism and systemic bias,³ which are often built into AI learning.

In the area of education, for example, studies have found that increased levels of surveillance in schools (including by private companies) correlate with harsher disciplinary decisions, worse academic outcomes, and increased contact between students and law enforcement.⁴ This disparately impacts students who are Black, identify as LGBTQ+, and those who have disabilities.⁵

In higher education, universities are beginning to use private AI models with admissions decisions. While AI may help improve the efficiency of weighing thousands of applications at a given university and could potentially help identify historically marginalized students who fall below the radar, the models themselves may introduce bias and fail to capture the complete picture of the applicant’s qualifications, including overcoming challenges and resilience.⁶

The use of predictive analysis in child welfare decision making also poses risks that should be regulated by the states. For example, predictive analysis could be used to help identify preventive services for families earlier in the process. However, because AI is frequently trained on data that includes longstanding bias and discrimination in reporting and investigations of child welfare cases, such “tools can reinforce existing racial and socioeconomic disparities.”⁷ In Oregon,

² WHITE HOUSE OFF. OF SCI. AND TECH. POL’Y, BLUEPRINT FOR AN AI BILL OF RIGHTS: MAKING AUTOMATED SYSTEMS WORK FOR THE AMERICAN PEOPLE (2022), <https://bidenwhitehouse.archives.gov/ostp/ai-bill-of-rights/>.

³ Center on the Developing Child, *How Racism Can Affect Child Development*, HARV. UNIV. INFOGRAPHIC (Nov. 16, 2020), developingchild.harvard.edu/resources/racism-and-eed.

⁴ Sarah Sparks, *High-Surveillance’ Schools Lead to More Suspensions, Lower Achievement*, EDUCATION WEEK (June 29, 2021), <https://shorturl.at/JkZF0>.

⁵ *Id.* Black students are “more than four times more likely than white students to attend a school with the highest level of surveillance.”

⁶ Ellen Evaristo, *Balancing the Potential and Pitfalls of AI in College Admissions*, USC ROSSIER MAGAZINE (2023) https://rossier.usc.edu/wp-content/uploads/pdf/USC_RossierMag_FW2023.pdf.

⁷ Efthimia M. Bechrakis, *When AI Enters Child Welfare: Practical Considerations for Child Welfare Attorneys*, 2026 A.B.A. LITIG. SEC. (July 28, 2026), <https://shorturl.at/vS4kH>.

the state stopped using an AI-powered algorithm only after an investigation by the Associated Press found tools “flagged a disproportionate number of Black children for ‘mandatory’ neglect investigations.”⁸

Some states are also beginning to consider using AI to help determine whether families and children qualify for public benefits. The State of Maryland announced in 2025 its intention to partner with Anthropic and Percepta to provide a range of government services.⁹ While this may help applicants speed up the process, without proper guardrails, AI’s automated decision making (“ADM”) systems may unfairly deny support to children and families, including access to food security and housing, without full transparency.¹⁰

These are only a few examples of the multitude of concerns that are facing communities and state legislators. Some of these examples may be directly or indirectly implicated by the Proposed AI Policy, which focuses on consumerism. Absent federal legislation, constituents and their representatives in the states, like Colorado, have grappled with potential solutions to ensure that families and children are not unfairly targeted, harmed, or excluded through the use of AI by both private companies and contracted companies providing government services. Colorado and other states should be commended for their effort to balance the need for AI to help improve many aspects of life against the need to prevent discrimination, especially against those marginalized and underserved by society for far too long. The FTC’s threat to use Section 5 of the FTC Act as a direct attack against AI companies seeking to comply with anti-discrimination state laws and requiring unnecessary disclosures will likely only stifle efforts to eradicate discrimination in AI services. The FTC should withdraw its Proposed AI Policy to help ensure that states are able to address potential harms without threat or fear of reprisal by the federal government intent on propagating its own set of ideological preferences.

II. The FTC Act does not preempt state regulation of AI systems and discrimination.

The FTC’s suggestion that state anti-discrimination and AI regulatory laws may be preempted by the federal regulatory scheme addressing deception to consumers is wholly unsupported. In fact, state AI regulation laws help further prevent and reduce deceptive practices in the states. While the FTC plays a vital role in enforcing federal consumer protection laws, the FTC Act plainly does not preempt state anti-discrimination laws that may apply to AI. First, states have historically enjoyed dual sovereignty over consumer protection and anti-discrimination laws. The FTC fails to cite any decisions holding that the FTC Act preempted a state consumer or anti-

⁸ Sally Ho & Garance Burke, *Oregon is dropping an artificial intelligence tool used in child welfare system*, ASSOCIATED PRESS (June 2, 2022) <https://apnews.com/article/politics-technology-pennsylvania-child-abuse-1ea160dc5c2c203fdab456e3c2d97930>.

⁹ Off. of Governor Wes Moore, *Maryland Governor Wes Moore Announces Landmark AI Partnership to Transform State Service Delivery*, (Nov. 13, 2025) <https://shorturl.at/s5vrh>.

¹⁰ Shakti Belway, *As Maryland embraces AI to tackle child poverty, it must also create appropriate guardrails*, NATIONAL CENTER FOR YOUTH LAW, MEDIUM (Dec. 13, 2025) <https://shorturl.at/Ah8dG>.

discrimination law. Second, state laws seeking to ensure that AI companies do not discriminate against children and families, intentionally or through disparate impact, do not conflict with Section 5 of the FTC Act. Such state laws may differ from the administration’s own strained stance of bias articulated in Executive Order 14365, “Ensuring a National Policy Framework for Artificial Intelligence” (December 11, 2025), which serves the basis for the Proposed AI Policy. However, a challenge to a state AI consumer or anti-discrimination law based on the executive order’s directive would find no merit in the courts, and the FTC fails to identify any such cases.¹¹

Finally, it is absurd to suggest that states may be prohibited under the FTC Act from requiring AI companies to respond to concerns that their algorithms may discriminate against a group of people based on their backgrounds and characteristics.¹² In the Proposed AI Policy, the FTC disfavors not only Colorado’s prior enacted law that required developers and others to prevent the creation of discriminatory ADM programs in several sectors, but it also claims that general anti-discrimination laws may also run afoul of federal law if they lead AI companies to adjusting their programs to avoid discriminatory effects. First, not just AI companies but all companies have duties to ensure their programs and services do not discriminate against people on the basis of their protected characteristics under state *and* federal laws and nothing in the FTC Act suggests otherwise. Second, according to the Proposed AI Policy, the FTC is concerned with consumers’ access to truthful and accurate outputs but misapplies those factors to AI companies that may seek to ensure their models are not unintentionally and unfairly discriminating against classes of people. For example, if an AI developer revisits and revises a college admissions program that was leading to Black and Brown college applicants being overwhelmingly denied admission compared to similarly situated white applicants for no valid reason, then disclosure would be necessary under the Proposed AI Policy. However, if the developer did nothing to address the discriminatory program that benefitted white applicants, then nothing would be required—despite consumers reasonably expecting a fair and accurate admissions program. Plainly, the FTC Act does not envision such outlandish results.

Conclusion

As AI systems become increasingly embedded in the daily lives of young people, the need for strong, enforceable safeguards has never been more urgent. Algorithmic transparency requires that AI algorithms and other AI programs are thoroughly tested for biases and deployed transparently and with consent, especially, but not exclusively, in systems that affect children.

¹¹ Even in the area of immigration, where the Courts have rightly held that immigration is a field reserved for Congress, the current administration’s efforts to challenge local and state “sanctuary” policies based on conflicts with federal laws have largely fallen flat. *See, e.g., United States v. Minnesota*, No. 25-CV-3798 (ECT/JFD), 2026 WL 2085701 (D. Minn. July 20, 2026) (dismissing case, in part, on grounds that the preemption claims by the United States ran afoul of the Tenth Amendment’s anti-commandeering doctrine); *see also id.* *15 (citing cases dismissing on same grounds).

¹² This disturbing interpretation of what amounts to discrimination is, unfortunately, not new to the administration. Its far-reaching efforts to quash lawful diversity, equity, and inclusion programs as “discriminatory” have been soundly defeated in the courts. Chriss Marr & Khorri Atkinson, *Trump’s Anti-DEI Efforts Struggle Under Federal Judges’ Scrutiny*, BLOOMBERG LAW (May 6, 2026) <https://shorturl.at/iPQch>.

States' efforts that ensure opportunity and access for all children and families through the enactment of laws supporting robust AI systems and anti-discrimination guardrails help get us closer to truth and accuracy and do not run afoul of the FTC Act.

Thank you for the opportunity to submit comments on this issue. If you have any questions, please contact David Hinojosa below.

/s/ David Hinojosa

David Hinojosa

Co-Director of Litigation

National Center for Youth Law

dhinojosa@youthlaw.org